

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 313/TD/2023

Coram:

Shri Arun Goyal, Member

Shri P.K. Singh, Member

Date of Order: 4th March, 2024

In the matter of

Petition under Regulation 15 (1) of the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for the grant of trading licence and other related matters) Regulations, 2020 for up-gradation of the inter-State trading licence from Category 'V' to Category 'IV'.

And

In the matter of

Instinct Infra and Power Limited,
C-201, Industrial Area Phase I, Block C,
Naraina Industrial Area Phase 1,
Naraina, New Delhi 110 028,

...Petitioner

Parties Present:

Shri Nishant Kumar, Advocate, IIAPL

ORDER

The Petitioner, Instinct Infra and Power Limited, has filed the present Petition for the upgradation of its inter-State trading licence in electricity from Category 'V' to Category 'IV' from 1.4.2023.

2. By order dated 7.9.2005, Instinct Advertising & Marketing Ltd., was granted a Category 'A' trading licence to trade in electricity as an electricity trader in the whole of India, except the State of Jammu and Kashmir, in accordance with Central Electricity Regulatory Commission (Procedure, Terms and Conditions of Trading licence and other related matters) Regulations, 2004. Consequent to the notification



of the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of trading licence and other related matters) Regulations, 2009 (trading licence regulations, 2009) as amended vide notification dated 7.6.2010, the licence was re-categorized as Category IV, subject to the terms and conditions contained in the licence. Subsequently, the Commission, vide Order dated 28.2.2023 in Petition No. 11/RC/2013, allowed upgradation of the licence of the Petitioner from Category 'IV' to Category 'III'. Further, vide the same Order, the name of the licensee was changed from 'Instinct Advertising & Marketing Ltd.' to 'Instinct Infra & Power Limited' consequent to issue of certificate by the Registrar of Companies, National Capital Territory of Delhi and Haryana.

Hearing dated 8.12.2023

3. The matter was called out for the hearing on 8.12.2023. In response to the specific query of the Commission regarding the payment of the annual licence fee for the current financial year 2023-24, the learned counsel for the Petitioner stated that the Petitioner has yet not paid the annual licence fees for the current year. Learned counsel, however, added that for the financial years 2020-21 & 2021-22, the Petitioner had paid an excess annual licence fee i.e. Rs. 6 lakh against applicable fees of Rs. 2 lakh and had also written to the Office of the Commission for adjustment of such fees.

4. The Commission, during the course of the hearing, observed that prior to the coming into effect of the Trading Licence Regulations, 2020, the Petitioner was a Category 'III' trading licensee (under Trading Licence Regulations, 2009) and as per Regulation 21 of the Trading Licence Regulations, 2020, the existing trading licensees were required to meet the Net Worth, Current Ratio and Liquidity Ratio criteria specified in Regulation 9(2) and submit an audited specific balance sheet within a

period of six months from the date of commencement of said Regulations. Further, a proviso to the said Regulations also stipulated that in case, the existing licensee failed to comply with the above, it shall submit an application for the change of category within six months from the date of commencement of the said Regulations.

5. Vide Record of Proceedings for the hearing dated 8.12.2023, the Petitioner was directed to clarify the (a) Rationale for the Petitioner indicating in the Petition that “pursuant to the enactment of new Regulations in the year 2020, the licence granted to the Petitioner again stood re-categorised as Category ‘V’ in terms of the Trading Licence Regulations, 2020 subject to the terms and conditions contained in the licence.”, (b) Whether the Petitioner had approached the Commission in accordance with Regulation 21(1) of the Trading Licence Regulations, 2020? If not, the reasons thereof. The Petitioner was further directed to pay the annual licence fees of the current financial year.

6. The Petitioner vide its affidavit dated 2.1.2024 has submitted the information called for and has submitted as under:

i. With regard to (a) of the RoP, the Petitioner has submitted that in the year 2020, the CERC (Procedure, Terms and Conditions for grant of Trading licence and other related matters) Regulations, 2009 were repealed by the Commission and new regulations came to be enacted on 31.1.2020, i.e. CERC (Procedure, Terms and Conditions for grant of trading licence and other related matters) Regulations, 2020 (Trading Licence Regulations, 2020). Coming into effect of the Trading Licence Regulations, 2020, the Petitioner had Category ‘III’ trading licence in terms of the Trading Licence Regulations, 2009 which provides for a minimum net worth requirement of 5 crore and the volume of electricity to be

traded was permissible upto 500 MUs, whereas the Trading Licence Regulations, 2020 under Category 'V' permitted the same volume of electricity to be traded i.e. upto 500 MUs with a net worth requirement of not less than 2 crore. Therefore, since the Petitioner was meeting the net worth requirement for Category 'V' as per the provisions of the Trading Licence Regulations, 2020 and the volume of electricity to be traded was permissible upto 500 MUs which is the same volume as permitted under Category 'III' of the Trading Licence Regulations, 2009, the Petitioner based on its *bona-fide* belief was under an impression that its existing trading licence stood re-categorized as Category 'V' as per the provisions of the Trading Licence Regulations, 2020.

ii. With regard to (b) of the RoP, when the Trading Licence Regulations, 2004 were repealed by way of enacting the Trading Licence Regulations, 2009 as amended from time to time, there was a specific provision under the Trading Licence Regulations, 2009 with respect to the re-classifications or re-categorization of the existing trading licensees under Regulation 15. However, when the Trading Licence Regulations, 2009 were repealed by way of enacting the Trading Licence Regulations, 2020, the provision with respect to the re-classifications or re-categorization of the existing trading licensees was not provided under the Trading Licence Regulations, 2020, rather, a new regulation came to inserted, i.e. Regulation 21, which mandates that the existing trading licensees shall meet the net worth, current ratio and liquidity ratio criteria as provided under Regulation 3(3) and shall submit an audited special balance sheet within a period of six months from the date of commencement of the Trading Licence Regulations, 2020 to support the compliance of the net worth requirement. Regulation 21 of the Trading Licence Regulations, 2020 also

provides that if the existing Licensees fails to comply the above said requirement of submitting an audited special balance sheet within a period of six months, then such existing licensees shall submit an application for change of category within six months from the date of commencement of the Trading Licence Regulations, 2020. Since the Petitioner was meeting the requirements as provided under Regulation 3(3) of the Trading Licence Regulations, 2020 for Category 'V' trading licence, the Petitioner was under a *bona fide* belief that it can trade in electricity as per Category 'V' trading licensee. However, the Petitioner could not approach the Commission within six months as provided under Regulation 21 due to the outbreak of Covid-19 pandemic after enactment of the 2020 Trading Licence Regulations followed by the multiple waves of the said pandemic. The mandate to approach the Commission under Regulation 21 came to the knowledge of the Petitioner at a much later stage, and the Petitioner has not in any manner deliberately restrained itself from abiding by the mandate as provided under the said Regulation 21. Therefore, the Commission may exercise its Power to Relax as provided under Regulation 23 to relax the mandate of Regulation 21 in the present facts and circumstances and taking into account that the Petitioner is holding a trading license since the year 2005 and has also abided by the Regulations and approached the Commission as and when mandated. The Petitioner undertakes that it shall abide by the provisions contained under the Trading Licence Regulations, 2020.

iii. With regard to the licence fees, the Petitioner has deposited an amount of Rs. 2,16,000/- on 21.12.2023 towards the annual licence fee for the current financial year.

Hearing dated 29.1.2024

7. The matter was called out for the hearing on 29.1.2024. During the course of the hearing, the learned counsel for the Petitioner submitted that, as per the direction of the Commission, vide Record of Proceedings for the hearing dated 8.12.2023, the Petitioner has already filed its compliance report and has also paid annual licence fees for the current year. The learned counsel added that during the previous four financial years, the Petitioner has, in total, paid Rs. 17.30 lakh towards the licence fees, and even considering the annual licence fees of Rs. 3 lakh for Category 'IV', the Petitioner has paid excess fees of Rs.5.30 lakh. The Petitioner vide Record of Proceedings for the hearing dated 29.1.2024 was directed to furnish the details of payment and its submissions towards payment of excess licence fees.

8. The Petitioner vide its affidavit dated 6.2.2024 has submitted the details of payment of licence fees as under:

Financial Year	Date of payment	UTR No./ REF No.	Amount (in Rs.)	Surcharge (in Rs.)	Total amount (in Rs.)
2020-21	23.2.2021	PUNBR52021022318894618	6,00,000/-	60,000/-	6,60,000/-
2021-22	26.07.2021	PUNBR52021072613171969	6,00,000/-	18,000/-	6,18,000/-
2022-23	30.10.2023	PAY UPA/18450753049/5136122251	2,00,000/-	36,000/-	2,36,000/-
2023-24	21.12.2023	PAY UPA/18786421764/5141940422	2,00,000/-	16,000/-	2,16,000/-
Total					17,30,000/-

9. The Petitioner has submitted that since it has deposited a total amount of Rs. 17,30,000/- during the previous four financial years including the current financial year 2023-24 towards the annual licence fee, the surplus amount towards the annual licence fee payable by the Petitioner in future, i.e. for financial year 2024-25 onwards be adjusted.

Analysis and Decision

10. We have considered the submissions of the Petitioner. Regulation 9(4) of the Trading Licence Regulations 2020 provides as under:

“(4) The Trading Licensee shall make an appropriate application accompanied by prescribed fees for up-gradation of its licence to a higher category or down-gradation of its licence to a lower category in order to fulfill the conditions of these regulations in accordance with the procedure specified in Regulation 15 of these regulations.”.

11. Regulation 15(1) of the Trading Licence Regulations 2020 provides as under:

“15(1) Upgradation of licence:

(a) The Trading Licensee may at any time during a particular year apply for a higher category licence on the basis of the volume proposed to be traded in a particular Year.

(b) The Trading Licensee shall file an application before the Commission for upgradation of its licence to a higher category as soon as he expects the trading volume to exceed the trading volume limit specified for the Trading Licensee’s existing category.

(c) The Trading Licensee shall be granted an opportunity of being heard by the Commission before taking a decision on the application

(d) The Trading Licensee shall be required to submit the audited special balance sheet to support the compliance of Net Worth requirement for higher category licence.

(e) The Trading Licensee shall pay licence fee applicable to the higher category licence if in a particular Year the licence has been upgraded:

Provided that in case a Trading Licensee has already paid licence fee applicable for its existing lower category licence in a particular year, then the Trading Licensee shall have to make payment equivalent to difference of fee applicable for higher category licence and fee already paid for existing licence category.”

12. The Petitioner has filed an application for the upgradation of its licence in accordance with the Trading Licence Regulations, 2020. On perusal of the application, the Petitioner being an existing trading licensee, fulfils all technical requirements for the grant of a Category ‘IV’ inter-State trading licence. As regards the net worth requirements for Category ‘IV’, Regulation 3(3) (a) of the Trading Licence Regulations, 2020 provides that a person applying for a Category ‘IV’ trading licence should have a net worth of Rs. 10 crore and should have maintained minimum current ration and

liquidity ratio of 1:1 on the date of audited special balance sheet accompanying the Petition.

13. The Petitioner has submitted the audited special balance sheet as on 15.8.2023. Based on the audited special balance sheet, its net worth has been worked out as under:

(Rs. in lakh)	
Net Worth Computation	As per Special Audited Balance Sheet as on 15.8.2023
Particulars	
A) Paid up equity capital (1)	380.42
B) Reserves and Surplus	
B.1. Capital Reserves	0.00
B.2. Capital Redemption Reserve	0.00
B.3. Debenture Redemption Reserve	0.00
B.4. Revaluation Reserve	0.00
B.5. Share Options Outstanding Account & Reserves other than free reserves	0.00
B.6. Securities Premium Reserve	363.82
B.7. Surplus (P and L Account)	410.14
B.8. Other Free Reserves (i.e. general reserve and cash flow reserve)	0.00
Free Reserves & Surplus considered for net worth (2) (B6+B7+B8)	773.96
C) Loans and Advances given to associates (3)	0.00
D) Deferred expenditure (including Misc. Expenses) not written off (4)	0.00
Net Worth (1+2-3-4)	1154.38

14. The net worth of the Petitioner is further represented by the following:

(Rs. in lakh)	
Net worth (Asset approach), Current Ratio & Liquidity Ratio computation	As per Special Audited Balance Sheet as on 15.8.2023
A) Non-current Assets	
A.1 Net block of Tangible Asset	382.36

A.2 Net Block of Intangible Asset	0.05
A.3 Capital work in progress	0.00
A.4 Intangible Assets under development	0.00
A.5 Non-Current investments	0.00
A.6 Deferred Tax Assets	0.38
A.7 Long-term loans and advances	0.00
A.7.1 Less: Loans & Advances given to Associates included in above	0.00
A.7.2 Net Long Term Loans & Advances (A.7 - A.7.1)	0.00
A.8 Other non-current asset (Right of use assets, capital advances and prepaid expenses, etc.)	125.00
A.9 Deferred expenditure (including Misc. Expenses) not written off (Not considered for net worth computation)	0.00
Total Non-Current Assets	507.79
Total Non-Current Assets considered for net worth (1)	507.79
B. Non-Current Liabilities, Preferential Share & Share Application money and Reserves other than free reserves	
B.1 Share application money pending allotment	0.00
B.2 Preference Share Capital	0.00
B.3 Long term Borrowings	362.48
B.4 Deferred tax Liabilities	0.00
B.5 Other Long Term Liabilities	0.00
B.6 Long Term provisions	0.00
B.7 Reserves other than free reserves	0.00
Total Non-Current Liabilities, reserves other than free reserves considered for Net worth (2)	362.48
C. Current Assets	
C.1. Current Investments	0.00
C.2. Inventories	46.52
C.3. Trade Receivables	1802.73
C.4. Cash and cash equivalents	1306.89
C.5 Short Term Loans & Advances	307.75
C.5.1 Less: Loans and Advances given to associates	0.00
C.5.2 Net Short-Term Loan and Advances (C.5 - C.5.1)	307.75
C.6 Other current assets	30.00
C.7 Deferred Expenditure	0.00
Total Current Assets	3493.89
Total Current Asset considered for Net worth (3)	3493.89
D. Current Liabilities	
D.1. Short-term Borrowings	466.41
D.2. Trade payables	1584.49
D.3. Other Current liabilities	395.61
D.4. Short-term provisions	38.31

Total Current Liabilities considered for Net worth (4)	2484.82
Net worth ((1-2)+(3-4))	1154.38

15. Based on the above, the net worth, current ratio and liquidity ratio of the Petitioner are as under:

Sr. No.	Particulars	As per Special Audited Balance Sheet as on 15.8.2023
1	Net worth (Rs. in lakh)	1154.38
2	Current ratio	1.41
3	Liquidity ratio	1.39

16. In terms of the above, the Petitioner meets the net worth, current ratio and liquidity requirements specified in the Trading Licence Regulations, 2020.

17. Regulation 21(1) of the Trading Licence Regulations, 2020 provides as under:

“21. Additional provisions in respect of Existing Licensees

(1) The Existing Licensees shall meet the Net Worth, Current Ratio and Liquidity Ratio criteria specified in clause (2) of Regulation 9 and submit an audited special balance sheet within a period of six months from the date of commencement of these regulations to support the compliance of Net Worth requirement:

Provided that in case the Existing Licensee fails to comply with the above, the Existing Licensee shall submit an application for category change within six months from the date of commencement of these regulations.”

18. As per the above provisions, the existing licensee was required to approach the Commission within a period of six months from the date of commencement of the Trading Licence Regulations, 2020 failing which, it was required to file an application for change of category within six months. In this regard, the Petitioner has submitted that it was meeting the requirements as provided under Regulation 3(3) of the 2020 Trading License Regulations for Category ‘V’ trading licensee and it was under a *bona-fide* belief that it can trade in electricity as per Category ‘V’ trading licensee. However,

the Petitioner could not approach the Commission within six months as provided under Regulation 21 due to the outbreak of Covid-19 pandemic after enactment of the Trading Licence Regulations, 2020 followed by the multiple waves of the said pandemic.

19. We have considered the submissions of the Petitioner. Since the Petitioner company meets the net worth, current ratio & liquidity requirements for Category 'IV' specified in the Trading Licence Regulations, 2020 and has paid the requisite licence fees, we, as a specific case, in exercise of our power conferred under Regulation 23 (Power to Relax) of the Trading Licence Regulations, 2020, relax the provisions of the Regulation 21(1). Accordingly, we approve that the category of the licence granted to the Petitioner shall stand revised to Category 'IV' with effect from the date of issuance of the order. The licensee shall remain bound by the terms and conditions contained in the Order dated 7.9.2005 in Petition No. 15/2005, whereby it was issued the trading licence and by the provisions of the Trading Licence Regulations, 2020, as amended from time to time. The relaxation granted in this order shall be not quoted as precedent for future.

20. Let an extract copy of this order be sent to the Central Government in the Ministry of Power and the Central Electricity Authority in terms of sub-section (7) of Section 15 of the Electricity Act, 2003, for their information and record.

21. We direct that necessary endorsement be made on the licence issued to the Petitioner with regard to the change of Category of the licensee.

22. Petition No. 313/TD/2023 is allowed in terms of the above.

Sd/-
(P.K. Singh)
Member

sd/-
(Arun Goyal)
Member

